

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BILL PAYNE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 245,709
<b>GUILD PLAZA HOTEL</b>	)	
Respondent	)	
AND	)	
	)	
<b>SUPERIOR NATIONAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

The claimant appealed the August 10, 1999 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

This is a claim for a June 1999 injury to the left knee. After finding that the claimant failed to prove that he sustained a work-related accident or injury, the Judge denied the request for benefits.

The claimant contends the Judge erred and requests the Appeals Board to review that finding. Conversely, the respondent contends the Judge erred by finding that claimant's testimony concerning notice was uncontroverted.

The only issues before the Appeals Board on this appeal are:

1. Did claimant sustain a work-related injury?
2. If so, did claimant provide timely notice of the accidental injury to the respondent?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds and concludes:

1. The preliminary hearing Order should be affirmed.

2. This claim hinges on Mr. Payne's credibility. He testified that he experienced severe left knee pain while moving tables and chairs while working for Guild Plaza Hotel on either June 2 or June 3, 1999. But the history contained in the June 3, 1999 X-ray report purportedly from Wesley Medical Center indicates that Mr. Payne developed pain in his left knee without any trauma. Further, the history provided to the Veteran's Administration Hospital on June 7, 1999, indicates that Mr. Payne's left knee pain began on Friday (which was June 4, 1999) while he was walking and that it was not associated with any injury. That note reads:

Recurrent pain in rt. knee since 1968, new onset pain lt knee friday, states was ambulating and pain started, not associated [sic] with any injury. Past med history of ligament and crtilage [sic] repair rt knee, states hsa [sic] placed more stress on lt. knee with activities. . . .

3. There are significant differences in Mr. Payne's testimony and the histories in the medical records. The Judge had the opportunity to observe Mr. Payne testify and assess his demeanor. In this instance, the Appeals Board gives some deference to the Judge's impression of Mr. Payne's credibility. After considering the entire record compiled to date, the Appeals Board affirms the Judge's finding that Mr. Payne failed to prove it is more probably true than not that he sustained personal injury by accident arising out of and in the course of his employment with the Guild Plaza Hotel.

4. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>1</sup>

**WHEREFORE**, the Appeals Board affirms the preliminary hearing Order dated August 10, 1999, entered by Judge Jon L. Frobish.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

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BOARD MEMBER

c: Jeffery R. Brewer, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 1998 Supp. 44-534a(a)(2).